

PAUL, FLANDREAU & BERGER, LLP  
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Attorney for: Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BENEDICT MCGILL	:	
	:	<b>CIVIL ACTION</b>
Plaintiff,	:	
	:	<b>NO. 2:18-cv-02635-GEKP</b>
v.	:	
	:	
DAVON L. CARROLL et al.,	:	
	:	
Defendants	:	

**MOTION TO WITHDRAW AS COUNSEL FOR  
PLAINTIFF BENEDICT MCGILL**

AND NOW, comes Timothy A. Berger, Esquire (“Counsel”) and files the within Motion to Withdraw as Counsel for Plaintiff, Benedict McGill, (“Plaintiff”) pursuant to Rule 5.1(c) of the Local Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania, and Pennsylvania Rule of Professional Conduct 1.16. In support thereof, Counsel states as follows:

1. On June 21, 2018, this case was removed to the United States District Court for the Eastern District of Pennsylvania by Defendants.
2. A Scheduling Order was issued by the Court on October 2, 2018, setting a Discovery deadline of February 1, 2019.
3. Defendants subsequently served written discovery on Plaintiff.
4. The written discovery was forwarded to Plaintiff with a request that he provide the

information requested by the discovery requests.

5. When Plaintiff returned his responses to the discovery, he failed to provide any information in response to numerous interrogatories.

6. Counsel subsequently spoke to Plaintiff and advised that Defendants were entitled to answers to all of the interrogatories and asked that he provide the missing information; Plaintiff was also provided with an updated draft of his Answers to Interrogatories that specifically highlighted the information that was needed by Counsel.

7. Between October 19, 2018 and the present, Counsel placed multiple unreturned telephone calls and sent numerous e-mails to Plaintiff to which no response was received concerning the missing discovery information; prior to the service of discovery, Plaintiff had promptly responded to email and to phone calls.

8. As a result, Plaintiff's November 27, 2018 deposition was postponed.

9. On January 4, 2019, after counsel for the parties conferred and proposed an amended schedule, the Court entered the Amended Scheduling Order extending the Discovery deadline to March 4, 2019.

10. By letters dated January 23, 2019 and February 6, 2019 that were sent by email, first class mail, and certified mail return receipt requested, Counsel advised that unless Plaintiff provided all of the necessary information required to complete the discovery responses, along with documents requested by Defendants, he could not provide effective representation and might have to withdraw.

11. None of the letters have been returned as undeliverable.

12. The most recent attempt to reach Plaintiff by phone yielded a recorded message that indicated the number was disconnected.

13. Plaintiff still has not provided the information and document required by Counsel and has been unable to provide dates for his deposition.

14. Due to Plaintiff's failure to timely respond to Counsel's requests for cooperation, Counsel cannot competently and adequately represent Plaintiff.

15. Counsel has written to Plaintiff to inform him of the Motion to Withdraw and suggestion to obtain alternative counsel.

16. A copy of this Motion is being served on Plaintiff at his last known address.

WHEREFORE, Timothy A. Berger, Esquire respectfully request that this Court Grant his Motion to Withdraw as Counsel and grant leave to withdraw his appearance for Plaintiff, Benedict McGill in this action, and further give Plaintiff forty-five (45) days to obtain new counsel.

Respectfully submitted,

Dated: 2/15/2019

BY: /s/ Timothy A. Berger, Esquire  
Timothy A. Berger, Esquire  
I.D. # 72954  
PAUL, FLANDREAU, & BERGER, LLP  
320 West Front Street  
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(610)565-4750  
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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
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BENEDICT MCGILL	:	
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Plaintiff,	:	<b>CIVIL ACTION</b>
	:	
v.	:	<b>NO. 2:18-cv-02635-GEKP</b>
	:	
DAVON L. CARROLL et al.,	:	
	:	
Defendants	:	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S COUNSEL’S MOTION TO  
WITHDRAW AS COUNSEL FOR PLAINTIFF BENEDICT MCGILL**

Petitioner, Timothy A. Berger, Esquire (“Counsel”) hereby submits the following Memorandum of Law in support of their Motion to Withdraw as Counsel of Plaintiff, Benedict McGill.

**I. INTRODUCTION**

Counsel incorporates by reference as if set forth herein the facts set forth in the Motion to Withdraw.

**II. ARGUMENT**

An attorney’s appearance may not be withdrawn except by leave of court, unless another attorney of this court shall at the same time enter an appearance for the same party. Rule 5(1)(c) of the Local Rules of Civil Procedure for the Eastern District of Pennsylvania. Whether an attorney is permitted to withdraw must be determined with reference to the underlying purpose of Local Rule 5.1, which includes “ensuring effective court administration.” See Ohntrup v. Firearms Ctr., Inc., 802 F.2d 676, 679 (3d Cir. 1986). When ruling on an attorney’s motion to withdraw, the Court should consider: (i) the reasons withdrawal is sought; (ii) the prejudice withdrawal may cause to the litigants; (iii) the harm withdrawal might cause to the

administration of justice; and (iv) the degree to which withdrawal will delay resolution of the case.

Counsel received no response from Plaintiff for an extended period of time in connection while trying to respond to Defendants' discovery requests. Rule 1.16(b) of the Pennsylvania Rules of Professional Conduct permits counsel to withdraw where:

(5) the client fails to substantially fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.

Since October 19, 2019, Counsel has been attempting to contact Plaintiff in order to obtain information needed to fully respond to discovery and to schedule Plaintiff's deposition.

However, Plaintiff still has not provided the necessary information even though he was cautioned that Counsel would be forced to withdraw. This lack of cooperation makes Counsel's representation ineffective and also impacts his ability to comply with his obligations to the Court. Thus, there has been an irreconcilable breakdown in the attorney-client relationship. Counsel cannot proceed further under the circumstances and effectively provide legal representation.

Accordingly, for the foregoing reasons, Timothy A. Berger, Esquire respectfully requests that the Court grant his Motion to Withdraw as Counsel of Plaintiff, Benedict McGill. So as to

avoid prejudicing Plaintiff, Counsel asks that Plaintiff be given 45 days to obtain replacement counsel.

Respectfully submitted,

Dated: 2/15/2019

BY: /s/ Timothy A. Berger, Esquire

Timothy A. Berger, Esquire

I.D. # 72954

PAUL, FLANDREAU, & BERGER, LLP

320 West Front Street

Media, PA 19063

(610)565-4750

Fax. No.: (610)565-5294

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
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BENEDICT MCGILL

Plaintiff,

v.

DAVON L. CARROLL et al.,

Defendants

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**ORDER**

AND NOW THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019 upon consideration Timothy A. Berger, Esquire's Motion to Withdraw Appearance as Counsel for Plaintiff, Benedict McGill and the supporting memorandum of law, it is hereby ORDERED and DECREED that said Motion is GRANTED and that Timothy A. Berger, Esquire is permitted to withdraw their appearance on behalf of Plaintiff in the above-captioned matter. Attorney Berger shall file a Notice of Withdrawal of Representation within \_\_\_\_ days of the date of this Order. Plaintiff shall have \_\_\_\_ days within to which notify the Court of the retention of substitute legal counsel who shall file their appearance of record.

BY THE COURT:

\_\_\_\_\_  
J.

**IN THE UNITED STATES DISTRICT COURT  
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BENEDICT MCGILL

Plaintiff,

v.

DAVON L. CARROLL et al.,

Defendants

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**CERTIFICATE OF SERVICE**

I, Timothy A. Berger, Esquire, hereby certifies that a true and correct copy of the foregoing Motion to Withdraw as Counsel of Plaintiff, Benedict McGill was served on all parties, via electronic service of the Court and is available for viewing and downloading from the ECF system and/or by first-class mail, postage prepaid postage.

Dated: 2/15/2019

BY: /s/ Timothy A. Berger, Esquire

Timothy A. Berger, Esquire

I.D. # 72954

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Attorney for Plaintiff